IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9380 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. NIRMA LTD. & 1 - Petitioners
Versus
COMMISSIONER OF SALES TAX & 1 - Respondents

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Appearance :
MR DA DAVE, SENIOR ADVOCATE WITH MR HASIT DILIP DAVE for Petitioners
MR MIHIR JOSHI, ADDITIONAL ADVOCATE GENERAL WITH MR SS PATEL, A.G.P for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ or order to declare, that notice dated March 1, 2005 issued by the Deputy Commissioner of Sales-Tax, Corporate Cell, Gujarat State, Ahmedabad, calling upon the petitioner No.1 to show cause as to why the transaction of supply of Linear Alkyl Benzene Fuels by M/s.I.O.C. Limited to the petitioner No.1, and the transaction of supply of the processed S.K.O. by the petitioner No.1 to I.O.C. Limited, be not treated as sales and value thereof be not subjected to tax under the provisions of the Gujarat Sales-Tax Act, 1969, is without authority of law, arbitrary, irrational, unjustified, untenable in law and on the facts as well as violative of the provisions of Articles 14, 19(1)(g) & 300A of the Constitution. The petitioners have further prayed to issue a writ of mandamus to declare that the transactions of receiving LABFS (SKO) and returning the same after extraction of 15% to 20% do not amount to sales as defined in Section

2(28) of the Gujarat Sales-Tax Act, 1969 [“the Act” for short), except in respect of the quantity retained by the petitioner No.1-Company. The petitioners have also prayed to issue a writ of prohibition restraining the respondents permanently from proceeding further with and/or from adjudicating and deciding the impugned show-cause notice dated March 1, 2005 produced at Annexure-A to the petition and/or from passing any order pursuant to and in connection with the said notice and subsequent intimations dated March 16, 2006 and/or March 31, 2006. The petitioners have also prayed to issue a writ of certiorari to quash the show-cause notice dated March 1, 2005 as well as the subsequent intimations dated March 16, 2006 and March 31, 2006.

2. The petitioner No.1 i.e. M/s. Nirma Limited is a Company registered under the provisions of the Companies Act, 1956. One of its Plants is situated at Alindra wherein Linear Alkyl Benzene

Fuels (LAB), detergent powder, detergent cakes etc. are being manufactured. The Alindra Plant of the petitioner No.1 is purchasing Superior Kerosene Oil (LABFS) from M/s.I.O.C.Limited, Vadodara through dedicated pipelines from the refinery of M/s.I.O.C.Limited as per the agreement dated March 14, 1998 entered into between them. The S.K.O. received by the petitioner No.1 is used for manufacturing normal paraffin in Alindra Plant. After extracting normal paraffin, the petitioner No.1 gives back/returns residue of S.K.O. to M/s.I.O.C.Limited, Vadodara. With respect to such transaction, the petitioner No.1 treats purchase of S.K.O. only to the extent of S.K.O. consumed in extracting normal paraffin and in respect of remaining S.K.O. returned to M/s.I.O.C.Limited, the petitioner No.1 is claiming the said quantity as goods returned under Rule-4 of the Gujarat Sales-Tax Rules, 1970 [the Rules" for short]. On January 1, 2005, a surprise visit was carried out at Alindra Plant by the officers discharging duties in the Office of the Deputy Commissioner

of Sales-Tax, Corporate Cell, Ahmedabad. During the surprise visit, copies of various documents were collected for verification. Thereafter, notice in Form-45 was issued to the petitioner No.1 calling for further information and clarification. In response to the notice in Form-45, the petitioner No.1 submitted some details and clarifications vide letter dated January 10, 2005 and January 28, 2005. The Deputy Commissioner of Sales-Tax, Corporate Cell, Gujarat State, Ahmedabad, perused the aforesaid documents as well as information and clarifications supplied by the petitioners and after examining the legal provisions as well as nature of transactions between the petitioner No.1 and M/s.I.O.C.Limited, found prima facie that the transaction of supply of Linear Alkyl Benzene Fuels by M/s,I.O.C.Limited to the petitioner as well as the transaction of processed S.K.O. supplied by the petitioner No.1 to M/s.I.O.C.Limited are sales within the meaning of Section 4 of the Sale of Goods Act, 1930. He also noticed that the petitioner No.1, after

receiving the goods, is consuming the goods in processing, which clearly indicates acceptance of goods as defined in Section 42 of the Sale of Goods Act, 1930. According to the Deputy Commissioner of Sales-Tax, Ahmedabad, the petitioner No.1 and M/s.I.O.C.Limited have given nomenclature to such transaction as “return of goods”, which is contrary to Rule-4 of the Rules because goods sold and goods returned are different products, as normal paraffin is missing in the returned goods. In the alternative, he was of the view that the claim for goods returned cannot be allowed in view of the decision of Kerala High Court in case of Grasim Industries Limited (1996 STC 285) where it is held that a return of the left over after use cannot be equated with the goods purchased and returned and the return should be of goods of the same nature and quality as those supplied. The Deputy Commissioner of Sales-Tax noticed that determination made by the Deputy Commissioner of Sales-Tax, Gujarat State under Section 62 of the Act on March 26, 1980 in the case of M/s.I.O.C.

Limited was not applicable to the supply of S.K.O. by M/s.I.O.C.Limited to the petitioner No.1 and supply of Linear Alkyl Benzene Fuels by the petitioner No.1 to M/s.I.O.C.Limited because the language employed in the agreement dated March 14, 1998 entered into between the petitioner No.1 and M/s.I.O.C.Limited is quite different and peculiar. It was also noticed by him that goods sold and goods returned were not having identical ingredients though prices for goods sold and goods returned might have been the same. In view of these tentative findings, the Deputy Commissioner of Sales-Tax, Corporate Cell, Gujarat State, Ahmedabad issued notice dated March 1, 2005 calling upon the petitioner No.1 to show cause as to why the transaction of supply of Linear Alkyl Benzene Fuels by M/s.I.O.C.Limited to the petitioner No.1 and the transaction of processed S.K.O. supplied by the petitioner No.1 to M/s.I.O.C.Limited be not treated as sales and value thereof be not subjected to tax under the provisions of the Gujarat Sales Tax Act, 1969, giving rise to the instant petition.

3. The claim of the petitioners is that the S.K.O. is supplied by I.O.C.Limited to the petitioner No.1 through pipeline, for which M/s.I.O.C.Limited raises invoices for the gross quantity and after part of S.K.O. supplied is used in manufacture of normal paraffin, the residue of S.K.O. is returned by the petitioner No.1 to M/s.I.O.C.Limited through another pipeline, for which the petitioner No.1 also raises invoices on M/s.I.O.C.Limited and as sale of S.K.O. within the meaning of Section 4 of the Sale of Goods Act, 1930 does not take place, notice impugned in the petition should be regarded as without jurisdiction and should be set aside. The petitioners have averred that excise is payable by the petitioner No.1 on the net quantity of S.K.O. consumed by the petitioner No.1 and, therefore, the transaction of supply of Linear Alkyl Benzene Fuels by M/s. I.O.C.Limited to the petitioner No.1 and the transaction of supply of processed S.K.O. by the petitioner No.1 to M/s. I.O.C.Limited cannot be treated as

sales, nor value thereof be subjected to tax under the provisions of the Act. What is maintained by the petitioners is that there was a similar arrangement between M/s.I.O.C.Limited and Indian Petro-Chemicals Limited regarding which determination was made by the Deputy Commissioner of Sales-Tax under Section 62 of the Act and as the determination made under Section 62 of the Act is binding on the respondent No.2, the impugned notice, which is issued without jurisdiction, should be set aside. According to the petitioners, final decision in the matter of liability of payment of tax by the petitioners is already taken by the Deputy Commissioner of Sales-Tax, Ahmedabad, which is quite evident from the perusal of the impugned notice and, therefore, the same deserves to be quashed. It is claimed by the petitioners that the Indian Petro-Chemicals Limited and Reliance Industries are not called upon to show cause as to why supply of LABFS and return of goods be not treated as sales and subjected to tax under the provisions of the Act, which is discriminatory

and violative of the principles enshrined in Article 14 of the Constitution. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

4. On service of notice, Mr.Harish Natvarlal Thakkar, Deputy Commissioner of Commercial Tax, (Corporate Cell) has filed affidavit-in-reply opposing admission and grant of interim relief in favour of the petitioners. What is stated in the reply-affidavit is that the petition, which is directed against show-cause notice dated March 1, 2005 issued to the petitioner No.1-Company is premature and, therefore, should not be entertained by the Court. It is mentioned in the reply that issuance of the notice is not an independent action involving assumption of jurisdiction, but, is part of the regular assessment proceedings being undertaken by the competent authority which are, admittedly, within the jurisdiction of the

authority concerned and, therefore, the petition should be dismissed. It is also mentioned in the reply that the petition is barred by the principles of delay, laches, waiver, acquiescence and estoppel and, therefore, the petitioners are not entitled to the reliefs claimed in the petition. In the reply, it is further mentioned that in the show-cause notice, tentative findings have been recorded, which are subject to adjudication after considering the replies/representations of the petitioners and it is not correct to state that final decisions are recorded in the show-cause notice. After asserting that the impugned notice is neither discriminatory nor irrational nor unreasonable nor oppressive nor unconstitutional nor baseless nor unwarranted, it is stated that the grounds mentioned in the memorandum of the petition do not touch the jurisdiction of the Assessing Officer to inquire into the matter in the course of any proceedings contemplated under the Act and, therefore, the petition should be dismissed. It is further mentioned in the reply that the

order passed under Section 62 of the Act in the case of M/s. IPCL is necessarily restricted to the particular facts of that case presented before the authority and can, at the highest, be said to be binding on that authority or its subordinate only in so far as the case of the assessee, in respect of whom the order has been passed, is concerned, provided that there is no change in facts or change in law either by judicial pronouncement or legislative amendment and, therefore, in view of detailed grounds mentioned in show-cause notice dated March 1, 2005, the said notice cannot be termed as illegal because of the determination made under Section 62 of the Act. It is asserted in the reply that merely because no tax was levied on the petitioner No.1-Company since 1999-2000, the authorities are not precluded from considering the issue in the subsequent assessment years and, therefore, the petitioners should not be granted the reliefs claimed in the petition. By filing the reply, the Deputy Commissioner of Sales-Tax has requested the Court to dismiss the petition.

5. The petitioners have filed affidavit-in-rejoinder controverting the statements made in the reply-affidavit filed by Mr.Thakkar. In the rejoinder, it is mentioned that the petitioner No.1 has not passed on tax liability to the consumers and, therefore, the respondents should be prohibited from proceeding further with the notice dated March 1, 2005. It is claimed in the rejoinder that livelihood of 9500 employees would be affected adversely if the petitioner No.1 is called upon to pay the amount of tax and, therefore, the reliefs claimed in the petition should be granted. What is mentioned in the rejoinder is that the petitioner No.1 is discriminated in spite of three determinations under Section 62 of the Act and, therefore, the respondents should be restrained from adjudicating the show-cause notice which is impugned in the petition. It is also stated in the rejoinder that the petition raises pure and substantial questions of law and, therefore, it

is maintainable. Over and above emphasizing these points, the petitioners have reiterated what is stated in the petition and, therefore, detailed reference to affidavit-in-rejoinder is avoided.

6. Mr.Dushyant A.Dave, learned Senior Advocate instructed by Mr.H.D.Dave, learned Advocate for the petitioners, contended that in view of the provisions of Sections 2(35), 2(36), 3, 7 of the Act read with Rule-4 of the Rules as well as Section 4 of the Sale of Goods Act, 1930, the transaction of supply of Linear Alkyl Benzene Fuels by M/s.I.O.C.Limited to the petitioner No.1 as well as the transaction of supply of the processed S.K.O. by the petitioner No.1 to M/s.I.O.C.Limited cannot be treated as sales and/or be subjected to tax under the provisions of the Act, and as the impugned notice is issued without jurisdiction, the petition should be entertained. It was contended that excise duty is payable by the petitioners on the net quantity of

S.K.O.consumed by the petitioners, which is quite evident from the Trade Notice No.133/97,dated December 2, 1997 produced at Annexure-D to the petition and, therefore, the petitioners are entitled to the reliefs claimed in the petition. What was asserted by the learned counsel for the petitioners was that in view of three determinations made under Section 62 of the Act by the Deputy Commissioner of Sales-Tax, supply of Linear Alkyl Benzene Fuels by M/s. I.O.C.Limited to the petitioner No.1 and supply of processed S.K.O.by the petitioner No.1 to M/s.I.O.C.Limited cannot be treated as sales and, therefore, the respondents should be prohibited from adjudicating the show-cause notice dated March 1, 2005. It was pleaded that, in fact, final decisions on all the relevant issues are recorded by the Deputy Commissioner of Sales-Tax, Corporate Cell, Gujarat State, Ahmedabad, who has issued the show-cause notice, and as no useful purpose is going to be served by directing the petitioners to approach the Deputy Commissioner

of Sales-Tax in response to the show-cause notice dated March 1, 2005, the petition should be entertained and the issues raised therein should be decided by this Court. According to the learned counsel for the petitioners, no show-cause notice as is issued to the petitioners is issued either to M/s.I.O.C.Limited or Indian Petro-Chemicals Limited and as the action of the respondents in issuing show-cause notice dated March 1, 2005 is violative of the principles enshrined in Article 14 of the Constitution, the petition should be entertained. The learned counsel emphasized that the petition is neither barred by the principles of delay, nor by the principles of laches or waiver or acquiescence, and as the petition involves determination of pure questions of law, the petition should be entertained and the reliefs claimed should be granted. In support of these submissions, the learned counsel for the petitioners placed reliance on the decisions in (1) Bengal Immunity Co. ltd. Vs. State of Bihar, AIR 1955 SC 661, (2)

Calcutta Discount Co. Ltd. Vs. ITO, AIR 196 SC 372, (3) Bharat Bank Ltd. Vs. Employees, AIR 1950 SC 188, (4) Himmatlal Mehta Vs. State of M.P., AIR 1954 SC 403, (5) J.M. Baxi Vs. Collector of Customs, (2001) 9 SCC 275, (6) Whirlpool Corporation Vs. Registrar of Trademarks, (1998)8 SCC 1, (7) Paradip Port Trust Vs. STO, (1998) 4 SCC 90, (8) Union of India Vs. State of Haryana, (2000) 10 SCC 482, (9) Union of India Vs. Hindalco Industries, (2003) 5 SCC 194, (10) Coffee Board Vs. Joint Commercial Tax Officer, AIR (1971) SC 870, (11) Ahmedabad Cotton Manufacturing Co. Vs. Union of India, AIR (1977) Guj. 113, (12) Nirma Chemical Works Vs. Union of India, 1981 ELT 617, (13) Gurwyayoor Managing Committee Vs. C.K. Rajan, (2003) 7 SCC 546, (14) State of Himachal Pradesh Vs. Gujarat Ambuja Cement Ltd., (2005)6 SCC 499, (15) L.K. Verma Vs. HMT Ltd., (2006) 2 SCC 269, (16) Union of India Vs. Tarachand Gupta, (1971) 1 SCC 486, (17) State of U.P. Vs. Indian Hum Pipe Co., (1977)2 SCC 724, (18) State of West Bengal Vs. North Adjani,

(1971)1 SCC 309, (20)State of Tripura Vs. Manoranjan Chakravarthy, (2001)10 SCC 740, (21) Omprakash Vs. State of Haryana (1971)3 SCC 792, (22) ABL International Ltd. Vs. ECG Corporation of India, (2004)3 SCC 553, (23) STO Vs. Budhprakash Jayprakash, AIR (1954) SC 459, (24)State of Madras Vs. Gannon Durkerley, AIR (1958) SC 560, (25) Devidas Gopal Krishnan Vs. State of Punjab, AIR (1967) SC 1895, (26) Builders Association of India Vs. Union of India, (1989)2 SCC 645, (27) Neyvely Lignite Corporation Vs. Commercial Tax Officer, (2001)9 SCC 648, (28) United Breweries Ltd. Vs. State of Andhra Pradesh, (1997)3 SCC 530, (29) Commissioner of Sales Tax Vs. Pio Food, AIR (1980)SC 1227, (30) Chowgule & Co., AIR (1981) SC 1014, (31) Pyarelal Malhotra, 37 STC 319, (32) BSNL Vs. Union of India, (2006)2 Scale 752, (33) Choksi Tube Co. Vs. Union of India, (1997) 11 SCC 179, (34) HSCV Vs. State of Punjab, (1974)3 SCC 91, and (35) Sushil Kumar Jha Vs. Union of India, (1983)3 SCC 325.

7. Mr.Mihir H.Joshi, learned Additional Advocate General, instructed by Mr.S.S.Patel, learned Assistant Government Pleader for the respondents emphasized that though the impugned notice is dated March 1, 2005, the petition is filed on April 28, 2006 and, therefore, the Court should hold that the petition is barred by the principles of delay, laches, acquiescence and estoppel. What was highlighted by the learned counsel for the respondents was that issuance of the notice is not an independent action involving assumption of jurisdiction, but, is part of regular assessment proceedings, which have been undertaken by the competent authority and which are, admittedly, within the jurisdiction of the authority concerned, and therefore, the petition should be dismissed. It was maintained by the learned Additional Advocate General that the petitioners are seeking to substitute the regular procedure of assessment by invoking extraordinary writ jurisdiction of the High Court under Article

226 of the Constitution, and the petitioners should not be permitted to adopt such a course. According to the learned counsel for the respondents, the petitioners are seeking to pre-empt, stall and delay the regular adjudication by the competent authority and, therefore, the petition should be rejected at the threshold. It was further asserted by the learned Additional Advocate General that the contention that the impugned notice is without jurisdiction is misconceived, inasmuch as the reasons mentioned in the petition do not touch the jurisdiction of the Assessing Officer to inquire into the matter in the course of regular assessment proceedings contemplated under the Act. According to the learned counsel for the respondents, though contention raised by the petitioners with reference to effect of determination made by the Deputy Commissioner of Sales-Tax is replied in Para-6 of the affidavit-in-reply, the same should not be adjudicated by this Court and adjudication of the same should be left to the competent

authority. According to the learned Additional Advocate General, elaborate reasons have been stated in the impugned show-cause notice to enable the petitioners to offer their explanation and as no final conclusions have been drawn while issuing show-cause notice, the same should not be invalidated on the ground that conclusions on relevant points are already reached by the competent authority. It was stressed that the impugned notice makes it very clear that the petitioners were asked to remain present before the competent authority on March 14, 2005 with explanation and required details so that the competent authority could be persuaded to take the view that neither the transaction of supply of Linear Alklyl Benzene Fules by M/s.I.O.C.Limited to the petitioner No.1 nor the transaction of supply of processed S.K.O. by the petitioner No.1 to M/s.I.O.C.Limited are sales nor value thereof is liable to be taxed under the Act, but, instead of offering explanation and required details, the petitioners have rushed to

this Court by invoking jurisdiction under Article 226 of the Constitution and, therefore, the petition, which is premature, should not be entertained by this Court.

8. This Court has heard Mr.Dushyant A.Dave, learned Senior Advocate for the petitioners and Mr.Mihir H.Joshi, learned Additional Advocate General for the State, at length and in great detail. This Court has also considered the documents forming part of the petition and the decisions cited at the Bar.

9. From the record of the case, it is evident that what is challenged by the petitioners in the present petition filed under Article 226 of the Constitution, is show-cause notice dated March 1, 2005 requiring the petitioner No.1 to respond on various issues raised therein. The different contentions, which have been raised by the learned counsel for the petitioners for consideration of this Court, need not be

adjudicated by this Court while exercising the powers under Article 226 of the Constitution. The learned counsel for the petitioners has cited several decisions at the Bar for guidance of this Court, which is quite evident from the list of authorities mentioned earlier. The principles laid down therein can hardly be disputed by any one and, therefore, detailed reference to the same is avoided. The judicial consensus emerging from the decisions rendered by the Supreme Court is that if the issuance of the notice is an independent action involving assumption of jurisdiction, a petition under Article 226 of the Constitution may be maintainable and in a case where issuance of notice is not an independent action involving assumption of jurisdiction, but, is part of regular assessment proceedings being undertaken by the competent authority, which are, admittedly, within the jurisdiction of the authority concerned, a petition filed under Article 226 of the Constitution would not be entertained. From the contents of notice impugned

in the petition and the statements made in the affidavit-in-reply, it is evident that issuance of notice in this case is not an independent action involving assumption of jurisdiction, but, is part of the regular assessment proceedings undertaken by the competent authority under Section 41 of the Act, and as the competent authority has jurisdiction to adjudicate the notice, it will not be prudent for this Court to entertain the petition filed under Article 226 of the Constitution. The question, whether the transaction between the petitioner No.1 and M/s.I.O.C.Limited are sales will have to be answered by the competent authority at the culmination of the adjudication. It is wrong to contend that the issues on which the petitioner No.1 is called upon to respond are already decided and that no useful purpose would be served by directing the petitioners to appeal before the respondent who has issued the notice. A fair reading of the notice impugned, makes it very clear that tentative findings have been

indicated so as to enable the petitioner No.1 to meet them effectively. If the tentative views had not been expressed, the petitioners would have argued that the notice was vague and, therefore, bad in law. It is not the case of the petitioners that the impugned show-cause notice has been adjudicated upon and the action has been taken finally against them. In fact, all the contentions raised in the petition including one relating to the effect of determinations made under Section 62 of the Act can be raised before the competent authority and the competent authority is duty bound to consider the same. Thus, this Court is of the opinion that writ petition filed by the petitioners is premature and cannot be entertained. It is difficult to state apart from speculation, what the outcome of the proceedings will be. In case the competent authority holds that the petitioners are liable to pay tax on the total value of S.K.O. supplied by M/s.I.O.C.Limited to the petitioner No.1 and total value of supply of processed S.K.O.by the

petitioner No.1 to M/s.I.O.C.Limited, it is certainly open to the petitioners either to file an appeal as provided in the Act or to take other action that they may be advised to resort to. Without showing cause against the notice, the petitioners have straight-way filed writ petition in the High Court and assailed the show-cause notice. There is no attack against vires of the statutory provisions governing the matter, nor personal malafides are alleged against the respondent No.2, who has issued the impugned show-cause notice. No infringement of any fundamental right guaranteed by the Constitution is proved. It cannot be said that notice is ex-facie a nullity or totally without jurisdiction in the traditional sense of that expression, that is to say that even commencement or initiation of the proceedings on the face of it and without anything more was totally unauthorised. It is well-settled that for entertaining a writ petition under Article 226 of the Constitution against a show-cause notice at that stage, it

should be shown that the authority had no power or jurisdiction to enter upon the inquiry in question. In the considered opinion of this Court, the petitioners have failed to establish that the Deputy Commissioner of Sales-Tax has no power or jurisdiction to enter upon the inquiry in question, which is sought to be undertaken during the course of regular assessment. Therefore, it is only appropriate that the petitioner should avail of the alternative remedy and show cause against the same before the authority concerned and take up the objections regarding jurisdiction also there. In catena of decisions, the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling inquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of parties is deprecated by the Supreme Court. The contention that there is breach of the provisions of Article 14 of the Constitution as no action is taken against

similarly situated Units like the Reliance Industries etc., has prima facie no substance. The record does not indicate that the respondents have taken a decision that no action would be taken against similarly situated Units. The case of the petitioners that others have been favoured, but, the petitioner No.1 is singled out arbitrarily cannot be examined by the Court, as those who have been allegedly favoured are not before the Court, nor any material is produced to indicate that the agreement between the Reliance Industries and its supplier of LABFS contains the same terms and conditions as indicated by Clauses 5.2.1, 5.2.2 and 5.2.3 of the agreement entered into between the petitioner No.1 and M/s.I.O.C.Limited read with pricing formula of LABFS to be supplied by the seller to the buyer, which is produced at Page-79 of the compilation. Therefore, no relief can be granted to the petitioners on the basis that the provisions of Article 14 are breached by the respondents. On the facts and in the circumstances of the case,

this Court is not satisfied that the show-cause notice impugned in the petition is totally nonest in the eye of law for absolute want of jurisdiction of the authority to even investigate into the facts and, therefore, the writ petition filed cannot be entertained for the mere asking and as a matter of routine. Even if it is assumed that the show-cause notice is founded on any legal premise, which is a jurisdictional issue, the same can even be urged by the recipient of the notice, and such issue can always be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Therefore, this Court is of the opinion that the petitioners should be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. For these reasons, the petition cannot be entertained and is liable to be dismissed.

For the foregoing reasons, the petition is not entertained, as it is at a premature stage.

Mr.S.S.Patel, learned Assistant Government Pleader, on instructions of Mr.H.N.Thakkar i.e. respondent No.2, who is personally present in the Court, states that the extended time-limit for completing regular assessment for A.Y. 2001-2002 has expired and that in view of the interim relief granted by the High Court in this petition, the same may be extended by two months. Mr.Hasit D.Dave, learned counsel for the petitioners, states that in view of peculiar facts of the case, the period for completing the assessment be extended by three months. Having regard to the facts of the case, the time-limit for completing regular assessment for A.Y. 2001-2002 is hereby extended by three months from today. It is clarified that it would be open to the petitioners to respond to the show-cause notice and take all stands highlighted in the writ petition. Subject to this clarification, notice issued earlier is hereby discharged.

Mr.D.A.Dave, learned Senior Advocate, has prayed to continue the ad-interim relief granted

earlier for two weeks to enable the petitioner to approach the higher forum. When this Court on analysis of the notice found that there is no substance in the petition, it would not be proper to continue ad-interim relief granted earlier in the petition. Therefore, the said request is refused. Ad-interim relief granted earlier is hereby vacated. There shall be no orders as to costs.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)